



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: May 14, 2002

COUNCIL DISTRICT: 3

SUBJECT: PP01-01-002. FINAL ENVIRONMENTAL IMPACT REPORT (EIR) FOR THE MIXED-USE PROJECT AND CENTURY CENTER PLAN AMENDMENT TO ALLOW UP TO 3,765,000 SQUARE FEET OF COMMERCIAL, OFFICE, AND RESIDENTIAL USES ON A 54-GROSS-ACRE SITE LOCATED IN A 12 BLOCK AREA GENERALLY BOUNDED BY JULIAN STREET ON THE NORTH; FOURTH STREET ON THE EAST; SAN FERNANDO STREET ON THE SOUTH; AND MARKET STREET ON THE WEST.

BACKGROUND

I. Purpose of an EIR

An EIR is an informational document to (1) inform public agency decision-makers and the public of the potentially significant environmental effects of a project, (2) identify possible ways to avoid or substantially reduce those significant effects, and (3) describe reasonable alternatives to the project. CEQA requires the lead agency to make a good faith effort at a reasonable and full disclosure. CEQA requires public agencies to follow an environmental review process intended to ensure that decision-makers have considered environmental concerns in their decision-making. Approval of a project with significant unavoidable impacts would require the decision-making body to adopt findings for each significant impact, mitigation measure, and alternative and to adopt a statement of overriding considerations to explain why the benefits of a project outweigh its significant impacts.

A. CEQA Requirements for Certification of an EIR

The California Environmental Quality Act (CEQA) Guidelines 15090 require, prior to approving a project, the lead agency to certify that (1) the Final EIR has been completed in compliance with CEQA, (2) the final EIR was presented to the decision-making body of the lead agency and the decision-making body reviewed and considered the information contained in the Final EIR before approving the project, and (3) the Final EIR reflects the independent judgement and analysis of the lead agency. When an EIR is certified by a non-elected decision-making body with the local lead agency, that certification may be appealed to the local lead agency's elected decision-making body.

B. San Jose Municipal Code Chapter 21.07 Requirements for Certification of an EIR

The City of San Jose is the lead agency for the Mixed-Use Project and Century Center Plan Amendment EIR as defined by CEQA. San Jose Municipal Code Chapter 21.07 designates the

Planning Commission as the decision-making body for certification of EIRs. The Planning Commission must hold a noticed public hearing to certify the Final EIR. Upon conclusion of its certification hearing, the Planning Commission may find that the Final EIR is completed in compliance with CEQA.

If the Planning Commission certifies the Final EIR, it may then immediately act or make recommendations on the project associated with the EIR. No action or recommendation by the Planning Commission may be deemed final until after the appeal period has expired. A decision by the Planning Commission not to certify a Final EIR is not subject to an appeal. If the Planning Commission does not certify the EIR, it may not take action or make any recommendation with regard to the project. A Final EIR which is revised at the direction of the Planning Commission shall require another noticed public hearing.

Any person may file a written appeal of the Planning Commission's certification of the Final EIR with the Director of Planning, Building and Code Enforcement no later than 5:00 p.m. on the **third business day** following the certification of the EIR. The appeal must state the specific reasons that the Final EIR should not be found to be completed in compliance with CEQA. No appeal will be considered unless it is based on issues that were raised at the public hearing either orally or in writing prior to the public hearing. Upon receipt of a timely appeal, the Director shall schedule a noticed public hearing on the appeal of the Commission's certification of the Final EIR before the City Council.

ANALYSIS

II. Preparation and Review of an EIR and Agency Decision Making

A. Notice of Preparation

On February 13, 2001, and March 16, 2001, the Director of Planning, Building and Code Enforcement sent a Notice of Preparation (NOP) to the State Clearinghouse, interested parties, and Responsible and Trustee Agencies as required by CEQA Guidelines Section 15082. The NOP contains a project description, project location, and probable environmental effects of the project. It is intended to solicit participation in determining the scope of the EIR. The NOP and responses to the NOP are contained at the beginning of the Technical Appendices to the Draft EIR. The Draft EIR may not be circulated until after the recipients have had 30 days to review the NOP.

B. Contents of the Draft EIR

The Draft EIR contains the contents required by Pub. Res. Code sec. 21002.1 and CEQA Guidelines 15143. The required contents include (1) a table of contents, (2) executive summary, (3) project description, (4) environmental setting, significant environmental impacts of the project, and mitigation measures, (5) cumulative impacts, (6) alternatives to the proposed project including the No Project Alternative and identification of an environmentally superior alternative, (7) Growth inducing impacts, and (8) Significant unavoidable adverse impacts.

C. Lead Agency Responsibilities

A consultant prepared the Draft EIR with the assistance of subconsultants for the City of San Jose as the Lead Agency. Planning staff and representatives of the City Attorneys Office reviewed the Administrative Draft EIR to exercise their independent judgement concerning the EIRs scope, content, and general CEQA adequacy. CEQA requires that, no matter who prepares the Administrative Draft EIR, the EIR must be subject to the Lead Agency's own review and analysis, and reflect the Lead Agency's independent judgement regarding the scope, content, and adequacy. The Lead Agency is responsible for the objectivity of the Draft EIR. At the time of EIR certification, the Planning Commission, or City Council on appeal, must make a specific written finding that the EIR reflects the independent judgement and analysis of the City of San Jose.

D. Public Notice and Review of a Draft EIR

On March 15, 2002, the Director of Planning, Building and Code Enforcement caused a Notice of Availability (NOA) to be published in the San Jose Mercury News and posted for review with the County Clerk. As required by Pub. Res. Code secs. 21092(b), 21092.6; CEQA Guidelines secs. 15087, 15105, the NOA contains (1) a project description and location, (2) identification of significant environmental impacts, (3) specification of the review period, (4) identification of the public hearing date, time, and place, (5) information about where the Draft EIR is available, (6) and whether the project site is a listed toxic site.

The Director filed a Notice of Completion (NOC) with the State Clearinghouse to coordinate the systematic review of the Draft EIR with State Agencies such as Caltrans. CEQA requires State Clearinghouse review of an EIR when a project, such as the Mixed-Use Project and Century Center Plan Amendment, is of "statewide, regional, or area significance" by definition. The proposed project meets the definition as a project with 500 or more residential units, 500,000 square feet of commercial buildings, or 250,000 square feet or more of office buildings.

The Draft EIR was circulated for public review for 45 days beginning on March 15, 2002 and ending on April 29, 2002 as required by Pub. Res. Code sec. 21091 and CEQA Guidelines 15087 and 15105. The Draft EIR was available for review in the Department of Planning, Building and Code Enforcement, at the Martin Luther King Junior Main Library, and online on the Department's website. In addition, the Draft EIR was mailed to Federal and State Agencies, Regional and Local Agencies, and private organizations and individuals listed in Section I of the First Amendment to the Draft EIR.

E. Preparation of a Final EIR

CEQA requires the Lead Agency to prepare a Final EIR responding to all environmental comments received on the Draft EIR during the public review period and to certify the Final EIR before approving the project. The responses to comments on a Draft EIR must include good faith, well-reasoned responses to all comments received on the Draft EIR. In responding to comments, CEQA does not require a Lead Agency to conduct every test or perform all research, study, or experimentation recommended or demanded by commentors. CEQA only requires a Lead Agency to respond to significant environmental issues and does not need to provide all information requested by reviewers as long as a good faith effort at full disclosure is made in the EIR.

The City's responses to comments on the Draft EIR are contained in the First Amendment to the Draft Environmental Impact Report. The First Amendment and the Draft EIR constitute the Final EIR. As required by CEQA, the First Amendment contains (1) a list of persons, agencies, and organizations commenting on the Draft EIR, (2) copies of comments received during the public review period of the Draft EIR, (3) the City's responses to those comments. The City provided a copy of its responses to each public agency and organization that submitted comments at least ten days prior to certifying the Final EIR in conformance with CEQA Guidelines Section 15089(b).

F. Recirculation of a Draft EIR

As a general rule, EIRs are circulated once for public review and comment. If "significant new information" is added to the EIR after the close of the public review period on the Draft EIR but before certification of the Final EIR, the Lead Agency must provide a second public review period and recirculate the Draft EIR for comments. Under CEQA Guidelines 15088(b), recirculation is required when new significant information identifies:

- (1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- (2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
- (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it; or
- (4) the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation of a Draft EIR is not required where the new information merely clarifies, amplifies, or makes minor modification to an adequate Draft EIR. Staff believes that none of the recirculation criteria have been met for the Final EIR. All new information that has been added to the Final EIR merely clarifies, amplifies, or makes minor modifications to the discussion and analysis in the Draft EIR.

G. Consideration of a Final EIR

A decision-making body is required to read and consider the information in an EIR before making a decision on the project. The City's administrative record on the proposed project must show that the Lead Agency reviewed and considered the Final EIR before acting on the project.

H. Certification of a Final EIR

Before approving the project, the Planning Commission must certify that the Final EIR was prepared in compliance with CEQA and was presented to the Lead Agency's decision-making body, which reviewed and considered the Final EIR before approving the project. In addition, the Planning Commission must certify that the EIR reflects the independent judgement and analysis of the City of San Jose.

Conclusion

The Mixed-Use Project and Century Center Plan Amendment Final EIR meets the requirements of CEQA by disclosing the significant environmental effects of the project, identifying feasible ways to mitigate the significant effects, and describing reasonable alternatives to the project. The Final EIR complies with the substantive and procedural requirements of the CEQA guidelines for projects of regional significance. The Final EIR has been completed in compliance with the requirements of CEQA. It also represents the independent judgement and analysis of the City of San Jose.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the Planning Commission adopt a resolution to certify that:

1. The final EIR has been completed in compliance with CEQA;
2. The final EIR reflects the independent judgement and analysis of the City of San Jose; and
3. The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to the Applicant and to the decision-making body of the City of San Jose for the project.

Stephen M. Haase, AICP, Director
Planning, Building and Code Enforcement

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